customer-specific information by requiring customer authorization before the LEC can release such information to third parties or use the information themselves to market supplemental services. Further, since the LECs claim that they do not use CPNI for marketing purposes, they should have no concerns with a rule that restricts such activity. The commission agrees that the privacy rule does address anti-competitive concerns, but that it does so justifiably in order to ensure that information that is authorized for release is provided in a fair and reasonable manner so as to encourage competition and the development of an economically efficient and technologically advanced telecommunications infrastructure.

TTA, GTE-SW, SWBT, and United commented that the Computer III remand proceeding which produced FCC Order, CC Docket Number 90-623 (November 21, 1991), preempted the proposed privacy rule's prior authorization provision. An earlier FCC order had required the BOCs to obtain prior authorization only from multiline business customers before releasing CPNI to third parties, however the BOCs reserved the right to use such information themselves. In the remand proceeding, the FCC determined that there were competitive advantages afforded the BOCs by virtue of not being required to obtain prior authorization on these customers. The FCC stated that "this advantage is of particular importance with respect to large business customers, as their CPNI is most likely to be of competitive value, due to the volume and nature of business involved." Therefore, the FCC changed its decision to require the BOCs to obtain prior authorization, from customers with 20 lines or more, before using or releasing CPNI. Additionally, the order issued on the remand proceeding stated there was a "practical impossibility of complying with state safeguards (requiring prior authorization from all customers) while simultaneously integrating interstate basic and enhanced services." It further stated that "if prior authorization rule were applied to all customers, only the largest business customers would be able to enjoy the one-stop-shopping benefits of the integrated marketing of basic and enhances services" because "applying a prior authorization rule for other than the largest customers likely would require a BOC to establish separate enhanced and basic service marketing forces for those customers. If a customer has restricted CPNI, whether through action or inaction, then for basic services that customer must deal with network-services-only personnel, i.e., those with no involvement with enhanced service marketing or sales, because only those personnel are permitted under the commission's (FCC's) CPNI rule to have access to restricted CPNI."

GTE-SW argued in comments that the proposed rule would require separate marketing channels for supplemental services in direct conflict with FCC orders. They further argued that the "increase in cost and the administrative burden created would make the provision of these services unattractive to GTE-SW and other LECs. LECs operating only in Texas may not choose to offer the service at all, while LECs with multi-state operations may shift investments to other states which encourage the introduction of new services." SWBT stated that the rule would "effectively eliminate the residence and business product promotion centers, the direct marketing center, and service centers (business offices) as viable sales channels and/or sales agents for supplemental services in the State of Texas." SWBT also stated that multi-line business customers would get two ballots under the rule-the FCCs and the states.

The commission concurs with the FCC's federal policy goal of pursuing an economically efficient and technologically advanced telecommunications infrastructure. However, the LECs' assertion that the FCC preempted this commission's prior authorization rule is misleading. The FCC preempted prior authorization requirements where such prior authorization was necessary before the BOCs could release information to its own personnel marketing enhanced services. The FCC correctly concluded that such prior authorization would be practically impossible without separate marketing personnel for basic and enhanced services since the LEC would already have effectively released the information to all personnel by virtue of its daily basic service operations. The intent of Texas's proposed rule was to restrict LEC release of customer-specific CPNI to third parties, but also to restrict the use of such information by LEC personnel marketing supplemental services. Accordingly, the rule has been revised to clarify that the use of such information by LEC personnel is restricted. The rule has been further amended to provide exceptions to the prior authorization requirements should a residential customer contact the LEC and request information about supplemental services, thereby encouraging one-stop-shopping benefits at the customer's request. The rule does not expressly or effectively require any separate marketing centers or personnel in order for the LEC to market supplemental services, but rather restricts the LEC's use of customer-specific CPNI to do such marketing. The LEC can offer information on supplemental services to any subscriber, at any time, using any marketing method, and any LEC personnel provided they do not use customer-specific CPNI to do so without prior authorization. What the rule expressly prohibits is for the LEC to use customer-specific CPNI for direct and focused marketing campaigns against residential customers, targeted for such marketing by virtue of their CPNI characteristics, without such customers' consent. Therefore, the commission is not in conflict with the FCC's federal policy objectives. Rather, this commission's approach to prior authorization, in fact, encourages the development of an economically efficient infrastructure by allowing the LECs to market supplemental services to all residential customers using existing sales channels; and promotes a technologically advanced telecommunications infrastructure by fostering competition through a fair exchange of authorized customer information among all providers of telecommunications services and products. Further, as the rule applies only to residential customers, the balloting requirements will not conflict or cause duplication with FCC balloting requirements.

TATAS and the Texas Gray Panthers did not want the LECs to be able to market supplemental services at the time a customer contacts the LEC to establish new services. The Texas Gray Panthers asserted that a customer is most vulnerable to sales pitches at the time he is establishing service, and that such one-time shot is unfair to other telecommunications vendors. However, GTE-SW commented that a customer expects to get full service from his local exchange carrier and should be allowed to receive such information from the LEC at any time. The proposed rule would have required the new customer to complete an authorization ballot prior to being told about supplemental services; however, the commission finds that a customer should be afforded the opportunity to obtain information about supplemental services at the time he initiates service provided that the LEC is required to inform the customer that such services may be available from a vendor other than the LEC. The rule has been amended generally as outlined previously to restrict the LECs use of CPNI, but has also been revised to provide for such specific situations as new customer service.

GTE-SW, SWBT, and TTA commented that the definition of customer-specific CPNI is too restrictive in including a customer's name, address, and telephone number. Such information is readily available on published customers in the telephone directory and should, therefore, not be considered proprietary. The commission agrees that such information cannot to be considered proprietary for those customers that do not have unlisted or unpublished directory information. The definition was intended to distinguish customer-specific CPNI from aggregate CPNI by the inclusion of information that identified the specific customer with specific network information. The definition has been revised to clarify that CPNI is customer-specific when the customer's name, address, or telephone number is matched up with such customer's network information.

SWBT argued that the provision in the rule requiring the LEC to provide names, addresses, and telephone numbers to any party requesting such information was contrary to the rule's purported goal of protecting the privacy rights of the customer. The commission finds that, to the extent such information is not unlisted or unpublished, the LEC must be required to provide such information upon request in order to assure equitable distribution of accurate information to all parties.

AT&T and Sprint commented that IXCs should have a separate line on the ballot for customers to authorize release of information as some customers may not realize that certain information would be restricted from their own presubscribed IXC. The rule has been revised to allow for a separate line on the ballot for customers to specifically authorize such release.

GTE-SW and SWBT commented that the manner in which customer-specific or aggregate CPNI may be provided upon authorization may result in a LEC having to provide its competitors with the results of the LEC's proprietary marketing data runs. AT&T suggested that third parties may want to get the

information in a different form than as compiled by the LEC. The rule has been revised to alleviate both of these concerns.

GTE-SW commented that the provision in the proposed rule addressing directory listings had nothing to do with customer privacy and that the effect would be to diminish contribution levels. The provision was in the proposed rule to except directory listings from the CPNI restrictions. Since the CPNI definition has been revised to clarify when customer names, addresses, and telephone numbers are included, this provision is no longer necessary and has, therefore, been removed.

TAASA and Crime Stoppers' comments were directed at caller ID services and were not relevant to the proposed rule.

DHS was concerned that the rule does not address the release of the names of callers to 800 numbers by 800 customers who receive such information on their telephone bills for 800 service. The commission has no jurisdiction to prohibit a customer from releasing information received on a telephone bill.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.57. Telecommunications Privacy.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Automatic number identification (ANI)–The automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.

(2) Aggregate CPNI–A configuration of CPNI that has been collected by a local exchange carrier and organized such that none of the information will identify an individual customer.

(3) Customer proprietary network information (CPNI), Customer-specific–Any information compiled on a customer by a local exchange carrier in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(4) Privacy issue–An issue that arises when a telecommunications utility proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer.

(5) Supplemental services–Telecommunications features or services offered by a local exchange carrier for which analogous services or products may be available to the customer from a source other than a local exchange carrier. Supplemental services shall not be construed to include optional extended area calling plans that a local exchange carrier may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service), or pursuant to a final order of the commission in a PURA, §42, §43 or §43(B) proceeding.

(b) Privacy considerations. Local exchange service customers should be permitted to control the outflow of information about themselves. Any local exchange carrier proposing to offer a new service or a new feature to an existing service under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), or §23.26 of this title (relating to New and Experimental Services) for which the commission finds a privacy issue, as that term is defined in subsection (a)(4) of this section, and for which the local exchange carrier has not shown good cause pursuant to subsection (c)(2)(ii) and (4) of this section, must, in a manner ordered by the commission:

(1) provide a means of restoring the lost degree of privacy at no charge to the public; and

(2) educate the public as to the means by which the lost degree of privacy can be restored.

(c) New services or features. Staff shall review all applications submitted by a local exchange carrier under the provisions of §23.24 of this title or §23.26 of this title for privacy issues. The application must identify all circumstances under which a customer of the local exchange carrier may experience a lost degree of privacy as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified:

(1) state whether the lost degree of privacy can be restored by the affected customers and how such customers can restore it;

(2) state whether the local exchange carrier will charge the affected customers for restoring the lost degree of privacy and, if applicable:

(A) what such charge will be; and

(B) show good cause for such charge;

(3) state how the local exchange carrier will educate the affected customers as to the implications for privacy and, if applicable, the means by which such customers can restore the lost degree of privacy; and

(4) show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored.

(d) Automatic number identification. The local exchange carriers shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement: "When an 800 or 900 number is dialed from your telephone, your telephone number may be transmitted to the company you have called and may be available to that company's service representative before your call is answered." The statement must appear in all telephone directories published for the local exchange carrier subsequent to the effective date of this section. The statement must appear as a billing insert for each local exchange carrier within 60 days of the effective date of this section and annually thereafter.

(e) Customer proprietary network information (customer-specific). Unless otherwise provided by this section, a local exchange carrier must ensure that all customer-specific CPNI that has been authorized for release by the customer to a third party is offered to such third parties, under the same terms, conditions, and prices as such or similar data is made available for use to all other businesses affiliated with the local exchange carrier and local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the customer-specific CPNI requested. A local exchange carrier must, upon request, provide such customer-specific CPNI to a third party under any other just, alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial, or discriminatory.

(1) Except as provided in paragraph (5) of this subsection, local exchange carrier personnel may not use customer-specific CPNI to market supplemental services to residential customers without written authorization from such residential customers as set out in paragraph (3) of this subsection.

(2) A local exchange carrier may not release customer-specific CPNI to any third party, including, but not limited to, providers of supplemental services and any businesses affiliated with the local exchange carrier without written authorization

from such customers as set out in paragraph (3) of this subsection.

(3) A ballot requesting customer authorization for the use or release of customer-specific CPNI shall be sent to all residential customers of the local exchange carrier at least one time. The ballot shall be reviewed by the staff of the Telephone Utility Analysis Division before it is sent to the customer. The staff shall notify the general counsel of any concerns it may have with the proposed ballot, and the general counsel shall notify the local exchange carrier within 10 days of submission if the proposed ballot may not be distributed. The ballot must be distributed to all residential customers of the local exchange carrier within 180 days of the effective date of this section.

(A) The ballot must describe specifically what information is to be released to third parties or used by local exchange carrier personnel to market supplemental services if authorization is granted. The ballot must also state that no such information will be used or released by the local exchange carrier if the ballot is not returned.

(B) If the authorization is to be requested for categories of information, the specific information contained in each category must be listed and the ballot must allow the customer to authorize each category of information separately.

(C) The ballot must allow the customer the option of listing only specific third parties for the local exchange carrier to which information may be released.

(D) The ballot must allow the customer the option of releasing information to the interexchange carrier to which the customer has presubscribed.

(E) The ballot must allow the customer the option of releasing information to any other interexchange carrier.

(F) The ballot may allow the customer the choice of releasing the information to any businesses affiliated with the local exchange carrier or to be used by local exchange carrier personnel marketing supplemental services only.

(G) The ballot may allow the customer the choice of releasing the information to any party.

(H) The ballot must state that there will be no charge to the customer for restricting or releasing any of the information listed on the ballot.

(4) A local exchange carrier may provide customer-specific CPNI to third parties without obtaining prior written authorization from the residential customer as provided in subparagraphs (A)-(D) of this subsection.

(A) A local exchange carrier may provide ANI to a provider of emergency services.

(B) A local exchange carrier must, where it has the technical capability, provide ANI to interexchange carriers or to other common carrier access customers.

(C) A local exchange carrier must provide ANI if otherwise required by law.

(D) The local exchange carrier must provide names, addresses, and telephone numbers of customers, other than those customers that have requested that such information be unlisted or unpublished for the purpose of directory publication, to any entity requesting such information.

(5) Local exchange carrier personnel may use customer-specific CPNI to market supplemental services to residential customers without obtaining prior written authorization from such customers as set out in subparagraphs (A) and (B) of this paragraph.

(A) If a new residential customer contacts a local exchange carrier to initiate local exchange service and such customer inquires about supplemental services, the local exchange carrier personnel must inform the new residential customer, prior to marketing the local exchange carrier's supplemental services to that customer, that similar services or products may be available to the customer from a vendor other than the local exchange carrier.

(B) If a residential customer contacts the local exchange carrier to inquire about supplemental services offered by the local exchange carrier and such residential customer has not authorized the local exchange carrier personnel to use his customer-specific CPNI to market supplemental services, the local exchange carrier personnel must ask the customer for verbal authorization to use such CPNI at that time. Such verbal authorization must be received each time such residential customer contacts the local exchange carrier to inquire about supplemental services.

(f) Aggregate CPNI. If a local exchange carrier compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the local exchange carrier for marketing purposes, it must also provide aggregate CPNI to any third party upon request. A local exchange carrier must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the local exchange carrier and to local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A local exchange carrier must, upon request, provide such aggregate CPNI to a third party under any other just, alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 15, 1992.

TRD-9205354 Mary Ross McDonald
Secretary
Public Utility Commission of Texas

Effective date: May 7, 1992

Proposal publication date: October 18, 1991

For further information, please call: (512) 458-0100

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 533. Practice and Procedure

• 22 TAC §§533.10, 533.18, 533.25

The Texas Real Estate Commission adopts amendments to §§533.10, 533.18, and 533.25, concerning the commission's rule of practice and procedure, without changes to the proposed text as published in the February 25, 1992, issue of the *Texas Register* (17 TexReg 1502). The amendments conform the sections with the agency's enabling statute, Texas Civil Statutes, Article 6573a, as amended by the 72nd Legislature, and conform the sections with the agency's current practices in contested cases.

The amendment to §533.10 removes a reference to legislative oversight previously contained in Texas Civil Statutes, Article 6573a, §5. The statutory provision was repealed in 1991 by the adoption of Senate Bill 432. The amendment also clarifies that 30 days' notice is not required for emergency rulemaking.

The amendment to §533.18 clarifies the authority of the chairman or member designated to preside by the chairman and authorizes the presiding member to enter orders which have been approved by the full commission.

EXHIBIT II

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards	)	CC Docket No. 90-623

COMMENTS OF THE

ARKANSAS PUBLIC SERVICE COMMISSION
AND THE
KANSAS CORPORATION COMMISSION
AND THE
MISSOURI PUBLIC SERVICE COMMISSION
AND THE
OKLAHOMA CORPORATION COMMISSION
AND THE
PUBLIC UTILITY COMMISSION OF TEXAS

ON BEHALF OF THE
SOUTHWEST REGIONAL REGULATORY GROUP

February 20, 1991

SUMMARY

The Southwest Regional Regulatory Group (SWRRG) represents regulatory agencies from the five states in which Southwestern Bell Telephone Company (SWBT) serves: Arkansas, Kansas, Missouri, Oklahoma, and Texas.

The SWRRG does not believe that there is evidentiary support for the FCC's position that the benefits outweigh the risks involved in the integration of enhanced and basic services. The SWRRG does not contest the fact that the establishment of separate subsidiaries for the provision of enhanced services would impose added costs on telecommunications utilities. However, there is no credible evidence that demonstrates that those costs would be greater than the costs of an integrated structure with sufficient non-structural safeguards to prevent cross-subsidization and discrimination, and assure fair competition.

The appearance of competition in the provision of enhanced services heightens state concerns over the BOCs' incentives to cross-subsidize these services. The SWRRG has serious concerns about the availability of FCC resources to do the type of monitoring required to ensure that cross-subsidization does not take place. We commend the FCC in its efforts to perform audits; however, the audit findings effectively demonstrate that the LECs are, in fact, currently abusing some of the FCC procedures.

The SWRRG believes that the proposed non-structural safeguards against discrimination for access to the BOC networks are adequate at this time. We remain convinced that prior written authorization from all customers should be required before using or releasing CPNI for unregulated purposes.

It is the SWRRG's position that structurally separate subsidiaries provide the greatest protection from cross-subsidization for the users of basic services, and assures equal treatment of all ESPs. We urge the FCC to reconsider its tentative conclusions of replacing its separate subsidiary requirements of the Computer II decision with accounting and other non-structural safeguards for enhanced services.

The SWRRG strongly opposes FCC efforts to preempt the states in matters related to Computer III services. The FCC has not met the burden of proof needed for preemption in this case. The SWRRG believes that the majority of these enhanced services are either local or intrastate services, and often involve recognition of local conditions and issues. As such they must be addressed through either state regulation, or in a cooperative federal-state setting, without threat of preemption.

Finally, the SWRRG believes that the most effective way to resolve the issues in the proposed rulemaking is through joint efforts and cooperation. We remain committed to the 410(b) concept of federal-state cooperation in evaluating these important matters.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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AND THE
PUBLIC UTILITY COMMISSION OF TEXAS

ON BEHALF OF THE
SOUTHWEST REGIONAL REGULATORY GROUP

I. INTRODUCTION

1. On December 17, 1990, the Federal Communications Commission ("FCC" or "Commission") released its Notice of Proposed Rulemaking ("NPRM") and Order in this proceeding.[1] The NPRM was issued in the wake of the recent decision of the Ninth Circuit Court of Appeals,[2] in which the Court vacated and remanded the orders promulgated by the FCC in its Computer Inquiry III proceeding ("CI-III").[3] Specifically, the Court determined that the FCC had not developed the record sufficiently to mandate non-structural

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1 Notice of Proposed Rulemaking and Order, CC Docket No. 90-623, released December 17, 1990.
2 People of State of California v. FCC, 905 F.2d 1217 (9th Cir. 1990).
3 Phase I Order, Phase I Order on Reconsideration, and the Phase III Order, in CC Docket No. 85-229.

separations for the Bell Operating Companies' ("BOCs'") provision of enhanced services. The Court also found that the Commission exceeded its statutory authority in preempting state regulation of enhanced services.

2. The FCC has asked for comments in this proceeding by February 15, 1991 and reply comments by March 15, 1991 regarding its proposals for the regulation of enhanced services and the provision of enhanced services by BOC affiliated enhanced service providers ("ESPs") through the implementation of non-structural safeguards. The Commission proposes to strengthen the non-structural safeguards ordered in CI-III, including accounting and cost allocation procedures. The FCC states that the Customer Proprietary Network Information ("CPNI") rules should be reevaluated and that "[the FCC would] preempt only those state regulations differing from our federal safeguards that would thwart or impede federal policy ...".[4]

3. The following comments from the Southwest Regional Regulatory Group ("SWRRG") represent the views of regulators from the five-state region served by Southwestern Bell Telephone Company ("SWBT"). These comments are being filed with the approval of the Arkansas, Kansas, Missouri, Oklahoma, and Texas Commissions.

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4 NPRM, para. 3.

17. Our agreement to these remaining four changes should not be misinterpreted. As we discuss throughout these comments, the SWRRG favors structural separation in lieu of non-structural safeguards for the provision of unregulated enhanced services. We believe that the largest measure of protection for basic service consumers is provided through the establishment of structurally separate subsidiaries. There should be no affiliation (other than the possibility of sharing corporate officers) between the entity providing monopoly services and the BOC affiliated operation providing competitive enhanced services.

C. Proposed Safeguards Are Needed To Protect Against Discrimination In Access To The Network

18. The FCC proposes to readopt its Computer III non-structural safeguards against discriminatory access to the BOC networks.[16] We believe at this time that the proposed non-structural safeguards against discrimination for access to the BOC networks are adequate. However, we reserve the right to address this issue within our own jurisdictions should the need arise, such as a customer complaint from an intrastate enhanced service provider.

D. CPNI Safeguards Should Be Modified

19. The FCC has proposed to expand and accelerate the scope of its review of the CPNI safeguards applicable to BOC provision of enhanced services. Specifically, the FCC requested both proposals for and comments on

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16 NPRM, para. 12-14.

improving implementation of possible modifications to the current CPNI rule (e.g., applying a prior authorization requirement to the BOCs, as well as to the independent ESPs, in some or all circumstances).[17]

20. The SWRRG remains convinced that prior written authorization from all customers should be required before using or releasing CPNI for unregulated purposes. Both state and federal regulators have experienced recent instances in which prior written authorization would have avoided serious problems with utility service. This issue involves the fundamental disclosure of customer specific information as well as the issue of competitive fairness. The release of CPNI without prior authorization appears to parallel the current "slamming" phenomenon in some ways, and should strike fear into the hearts of all regulators. Parallels also occur with respect to the prior authorization characteristics of information service blocking which are being contested throughout the country. We are also aware of the California Public Utility Commission's investigation of the Pacific Bell Telephone Company's practice of enrolling customers for custom-calling services either without their consent or without the notification that these services were not required in order to obtain basic telephone service[18] -- when these uninformed customers did not want the custom-calling features. Such incidents cannot be ignored, and must be viewed as reasonable evidence to declare that written authorization is necessary prior to the disclosure of CPNI.

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17 NPRM, para. 40.
18 California Public Utility Commission Investigation No. 85-03-078.

21. Arguments surrounding the CPNI issue are comparable to those related to the issue of ordering Complementary Network Services ("CNSs") for a third party in the initial CI-III proceeding. In discussions between SWRRG and SWBT on the CNS issue, the company contends that it should be allowed to continue processing orders for CNSs for customers without written authorization as it currently does. It is relevant to the current issue to recall that SWBT failed to acknowledge in that situation that its "new role" as an ESP facing competition from unaffiliated ESPs requires the establishment of new regulatory policies and practices. Indeed, as the regulatory environment changes, it is inconceivable that the policies and practices that are now being followed will continue unchanged.

22. Our insistence that written authorization be required from all entities obtaining regulated services on behalf of their "customers", is intended as a preventive practice to alleviate consumer confusion and aggravation, and to minimize costs associated with correcting the above-mentioned abuses. We believe that this recommendation represents a reasonable balance of efficiency, competitive equity, and privacy.

23. Fiscal compensation for the use of CPNI has not been addressed in previous comments or in the NPRM, but is an issue we believe should be explored. Currently, the BOCs make various customer lists available to the interexchange carriers ("IXCs") for a specific charge, depending upon the type of list purchased. Likewise, the BOCs should be required to charge ESPs for customer lists. To maintain a "level playing field", we believe that it is appropriate to require the BOCs to charge themselves for these

customer lists as they would any other unaffiliated entity. The fact that the BOCs already have the information is neither sufficient nor persuasive evidence to defeat the concept of a fair and level playing field. To allow anything less defeats the purpose of Comparably Efficient Interconnection ("CEI") and the concept of fair competition.

24. The SWRRG has serious apprehensions regarding the abuses that could arise in an environment of non-structural safeguards if access requirements to CPNI for a non-affiliated ESP differ from those of a BOC and AT&T ESP affiliate. For example, in an open case currently before the Missouri Public Service Commission for decision,[19] SWBT revealed that it has adopted a "team marketing" approach to determine whether a Centrex or Telecom equipment offering should be provided to a large customer. (See Attachment A.) This transcript excerpt suggests that the Company will market the service option to the customer which earns the largest contribution to the corporation. Given our concerns over potential abuses, we praise the FCC's recognition and recommendation that states may wish to adopt CPNI rules for intrastate regulatory purposes which differ from those proposed by the FCC.

19 Docket TO-91-163, In the Matter of Southwestern Bell's Plexar-Custom Costing Methodology, Missouri Public Service Commission. [The provision of Attachment A reflects no predisposition toward the case before the Missouri Public Service Commission.]

EXHIBIT III

Before the
U.S. DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230

In the Matter of:	)	
	)	
Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information	)	Docket No. 940104-4004

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

7800 Shoal Creek Blvd.
Austin, TX 78757
(512) 458-0100

March 10, 1994

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EXECUTIVE SUMMARY

The Public Utility Commission of Texas supports the development of a comprehensive approach to privacy regulation. We believe the privacy standards set forth in our Telecommunications Privacy Rule can serve as a guideline to developing a set of standards for the NII. Specifically, telecommunications and information services customers should be able to control the outflow of information about themselves. Customer education is a critical component of an effective privacy policy. The privacy standards developed for the NII should be technology-neutral, otherwise, they will become quickly obsolete. Regulations governing the use of CPNI should appropriately balance consumer privacy interests and competitive concerns. The use and dissemination of information obtained via ANI should be subject to the same privacy standards as information obtained via other technologies. Privacy policies should facilitate customer choice, maintain current privacy expectations unless the consumer "opts-in," and be applied fairly across service providers and services. Furthermore, we support H.R. 3432 and recommend that its approach and application be expanded to develop national privacy standards.

Before the
U.S. DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230

In the Matter of:	)	
	)	
Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information	)	Docket No. 940104-4004

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

1. On February 7, 1994, the National Telecommunications and Information Administration ("NTIA") of the U.S. Department of Commerce released its Notice of Inquiry and Request for Comments in this proceeding.[1]

2. The NTIA has asked for comments by March 14, 1994 in this proceeding as part of its comprehensive review of privacy issues relating to private sector use of telecommunications-related personal information associated with the National Information Infrastructure (NII).

3. The following comments represent the views of the Public Utility Commission of Texas ("PUCT").

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1 Notice of Inquiry and Request for Comments ("NIRC"), Docket No. 940104-4004, released February 7, 1994.

II. PRIVACY IN A CHANGING ENVIRONMENT

A. A Comprehensive Approach to Privacy Is Necessary

4. The PUCT agrees with the NTIA that as the NII develops, it will become increasingly difficult to define the rights and responsibilities of stakeholders.[2] Today, different sets of privacy standards and regulations apply to cable operators, local exchange carriers (LECs), and interexchange carriers (IXCs). Furthermore, other firms that provide telecommunications and other information services are subject to no such restrictions. This patchwork of regulations governing the use of personal information will become increasingly difficult to administer as the boundaries between information services companies blur, and as new services and technologies emerge.

5. We believe there is an urgent need for a comprehensive approach to privacy regulation.[3] Such an approach will ensure that service providers receive equitable treatment, and moreover, that consumers understand the privacy implications of the new services being offered, and are able to control the release of personal information, if they so choose. A patchwork of privacy standards, on the other hand, may grant competitive advantages to certain providers over others. It will also frustrate consumer education efforts, resulting in customer confusion.

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2 NIRC, para. 12.
3 NIRC, para. 12.

B. The PUCT's Privacy Standards Can Be Extended to the NII

6. The PUCT believes a set of overarching principles can be established that extend beyond specific services and apply to a myriad of telecommunications and other information services. We believe that the privacy standards set forth in our Telecommunications Privacy Rule[4] can serve as a guideline for the NII.

7. The cornerstone of the PUCT's Telecommunications Privacy Rule is the principle that local exchange service customers should be permitted to control the outflow of information about themselves. The rule defines a "privacy issue" as one that arises when a telecommunications utility proposes to offer a new service or feature that would result in a change in the outflow of information about a customer. The rule requires LECs to identify privacy issues in all new service applications, i.e., to identify all circumstances under which a customer of the LEC may experience a lost degree of privacy as a result of the new service, including, but not limited to, whether a customer's name, address or telephone number will be provided to a called party or to any other third party.

8. For each such circumstance identified, the LEC must state whether the lost degree of privacy can be restored by the affected customers, and if so, how. The LEC must show good cause for not offering a means by which the customer can restore a lost degree of privacy. If there is a charge for restoring the lost degree of privacy, the LEC must show good cause for such

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4 Attached as Exhibit I.

charge. Further, the LEC must educate customers about the privacy implications of the new service, and how privacy can be restored.

9. Although the PUCT's privacy rule applies only to LECs in the state of Texas, its fundamental principle, that of allowing users to control the outflow of information about themselves, can be extended nationwide to all providers, services and users on the NII. Additionally, the principles underlying the rule can easily be extended beyond the scope of telecommunications and information services to include the protection of other personal information, such as medical records.

10. The PUCT's privacy rule can be implemented on a national level by requiring all service providers on the NII to identify privacy issues that arise as a result of their services, to educate customers and those whose privacy is potentially affected by the service about the privacy implications of the service, and to provide a means by which a customer can restore the lost degree of privacy if he or she so chooses. Additionally, service providers should be required to demonstrate good cause for charging a fee to restore the lost degree of privacy. Measures such as these will ensure that privacy protections apply equally to all Americans that use the NII, regardless of age, economic status, or technological literacy.

C. Policies Should Be Technology-Neutral

11. The NTIA should strive to develop laws and policies that are "technology-neutral,"[5] because policies that are technology-specific will become

5 NIRC, para. 11.

quickly obsolete. The PUCT's privacy policies are "technology-neutral" because the ability to control the outflow of information about oneself is not specific to any particular technology or service. Furthermore, it is virtually impossible to anticipate the impact of future technologies on the privacy expectations of telecommunications users.[6] The adoption of broad privacy principles, such as the PUCT's, will ensure that regulations do not become antiquated before they are implemented.

III. TELEPHONE TRANSACTION GENERATED INFORMATION

A. Customer Proprietary Network Information

12. The PUCT believes that as the NII develops, Customer Proprietary Network Information (CPNI) will evolve to encompass far more subscriber information than it does today.[7] As the number of services on the NII grows, CPNI will expand to include not only call detail and billing information, but also information about a subscriber's political views (what on-line news services does he subscribe to?) and cinematic preferences (what on-line movies did she order this week?).

13. NTIA correctly observes that rationales for regulating CPNI are twofold: ensuring competitive equity between service providers, and protecting customer privacy.[8] The PUCT agrees that the rationales for regulating use of CPNI based on competitive concerns do indeed suggest a focus on "dominant

6 NIRC, para. 11.
7 NIRC, para. 36.
8 NIRC, para. 36.

providers," (i.e. those with market power), such as AT&T and the Bell Operating Companies (BOCs), while customer privacy concerns suggest a broader application of such regulatory protections.

14. The rapidly changing technological and competitive environment will require frequent reevaluation of both the privacy and competitive aspects of CPNI regulation. Regulations governing the use of CPNI should be flexible, so that they can readily be adapted to new technologies and competitive situations. Further, the competitive and privacy issues surrounding CPNI must not be evaluated in isolation of each other. As discussed below, the two issues often affect one another and they must be evaluated in conjunction.

15. Competitive concerns surrounding CPNI use arise from the fact that dominant telecommunications providers maintain large databases of information about their subscribers. In the case of dominant LECs, this is likely to include information about the vast majority of households in the state. This information includes both directory-type information, such as names and addresses, as well as information about calling patterns, payment information, and types of services purchased. Dominant providers have been able to compile this information largely as a result of their positions as monopoly providers. As competition for telecommunications services grows, this wealth of information is a formidable source of competitive advantage to the incumbent, and could be an insurmountable barrier to entry for potential competitors.

16. Furthermore, although much of the debate regarding CPNI has focused on enhanced services, the PUCT believes that as an increasing number of previously monopoly services become open to competition, it is necessary to

ensure that competitive providers have access to information on the same terms as the incumbent provider. Likewise, protections must be put in place as LECs enter markets from which they were previously barred.

17. For example, since many LECs perform billing and collection services for IXCs, they would enjoy a substantial competitive advantage if allowed to enter the long distance market, because they would have information not only about the calling habits of their subscribers, but also who the customer's preferred long distance carrier is, and how many times the customer may have changed carriers.

18. The FCC recently adopted rules allowing for expanded interconnection for special access and switched transport services. These rules have opened the door to competition for these services by allowing competitive access providers to connect their facilities to the LEC's at the LEC central office. The PUCT has also recently adopted a rule requiring expanded interconnection for intrastate special access services. We strongly support the concept of an open network, and the fostering of competition in the telecommunications industry. We observe, however, that interconnection to the "information bottleneck" is just as vital a component to telecommunications competition as is physical access. If competitors are denied access to information, pro-competitive policies may be effectively thwarted, no matter what physical facilities are in place.

19. Complicating this issue is the fact that broadening the availability of CPNI poses a threat to consumer privacy. Making information available to an increased number of parties reflects a change in the outflow of information

about a customer, and precautions must be taken to ensure that customer privacy is not compromised while promoting competitive equity.

20. The PUCT believes that the principles set forth in its Telecommunications Privacy Rule, discussed earlier, properly balance the need for competitive equity with customer privacy protections. Although the provisions of the rule pertaining to Customer-specific CPNI[9] were overturned in Federal District Court,[10] because they were found to be preempted by specific language in the FCC's CPNI regulations, we believe the principles set forth in the PUCT's rule appropriately balance competitive and privacy concerns regarding the use of CPNI, even within the FCC's regulatory framework. Therefore we will discuss the rule's requirements below.

21. The rule sought to ensure customer privacy by requiring LECs to obtain written authorization (with certain limited exceptions) from a residential customer before allowing its personnel to use customer-specific CPNI to market supplemental services to that customer. Furthermore, a LEC could not release customer-specific CPNI to any third party, including but not limited to, providers of supplemental services and any businesses affiliated with the LEC, without written authorization from the customer.

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9 PUCT Substantive Rule §23.57(a)(3) defines customer-specific CPNI as "any information compiled on a customer by a local exchange carrier in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns."

10 S.W.Bell v. PUC, 812 F. Supp. 706.

22. Written authorization for release of CPNI would be obtained by requiring that a ballot be sent to all residential customers. This ballot would have to describe specifically the nature of the information to be released if authorization is granted, and allow the customer the option of specifying what information he or she wants released. There would be no charge to the customer for restricting the release of his or her CPNI. Furthermore, no information would be used or released by the LEC if the ballot is not returned.

23. The rule provided for competitive equity by requiring that a LEC offer all information the customer has authorized for release to a third party to such third parties under the same terms, conditions, and prices as such data is made available for use to all other businesses affiliated with the LEC, and LEC personnel marketing supplemental services. In addition, the third party would have to specify the type and scope of the CPNI desired.

24. We believe the approach set forth in our rule appropriately and fairly balances customer privacy concerns with competitive equity concerns. In addition, the rule provides for customer education by requiring that customers be advised of exactly what information will be released if authorization is given. The PUCT believes that customer education is a crucial component of a successful privacy policy.

25. Further, as noted previously, the portion of the PUCT's rule relating to customer-specific CPNI was overturned because it was determined to be in conflict with explicit language in the FCC's order and therefore preempted. Although the PUCT generally believes the FCC appropriately accommodated the competitive uses of CPNI, the PUCT believes its rule

appropriately balanced the privacy interest within the FCC's competitive framework.

26. We firmly disagree with the FCC's assumption that there are no significant privacy concerns when CPNI is available to different divisions within a single integrated company.[11] As our discussion above demonstrates, the privacy and competitive concerns surrounding CPNI are closely intertwined and must always be evaluated concurrently. This fact emphasizes the need to have a national policy in place that is both protective of consumer privacy, and equitable towards competitors.

27. The PUCT believes that the principles discussed above regarding CPNI can and should be applied to the handling of transactional records associated with multimedia services delivered over the NII.[12] To protect consumer expectations of privacy, multimedia service providers should be required to obtain affirmative consent from NII users for the collection and dissemination of personal information.[13] Secondary uses of personal information derived through the use of NII multimedia should not be permissible absent user consent.[14] By "affirmative consent," we mean that if no response is received from the user regarding the release of personal information, it shall be presumed that the user does not give her consent to the release of information.

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11 NIRC, para. 36.
12 NIRC, para. 21.
13 NIRC, para. 21.
14 NIRC, para. 22.